

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ESTEBAN GALINDO,) Civil No. 08-CV-2080-WVG
Plaintiff,)
v.) ORDER GRANTING DEFENDANTS'
M.A. SMELOSKY, et al.,) MOTION FOR SUMMARY JUDGMENT
Defendants.) [DOC. NO. 25]

)

Pending before the Court is Defendants' unopposed Motion for Summary Judgment. (Doc. No. 25.) The parties have consented to the undersigned Magistrate Judge's jurisdiction, and the matter has accordingly been referred to the undersigned for all purposes. (Doc. No. 24.) Defendants claim qualified immunity from suit and argue they did not violate Plaintiff's constitutional rights when they denied his request for dentures. As explained below, the Court GRANTS Defendants' motion and enters judgment in their favor.

/ / /
/ / /
/ / /
/ / /

I. FACTUAL BACKGROUND^{1/}

On August 21, 2006, the California Department of Corrections and Rehabilitation ("CDCR") entered into a stipulation addressing the dental care needs of its inmates as part of a class action. The class certified was "all California state prisoners in the custody of CDCR who have serious dental care needs." As part of the stipulation, CDCR agreed to implement Health Care Services Division Dental Policies and Procedures (hereinafter, "P&P").

The P&P was "designed to meet at least the minimum level of dental care necessary to fulfill [CDCR]'s obligations under the Eighth Amendment of the U.S. Constitution." The P&P outlines the procedure under the class action stipulation relating to dental prostheses in force from October 9, 2007 through at least July 2010. The P&P provides that a "dental prosthesis shall be constructed only when: . . . b. An inmate-patient is edentulous [toothless], is missing an anterior [front] tooth, or has seven or fewer posterior teeth in occlusion." Prior to August 2006, the CDCR's P&P manual also authorized dentures when an inmate had seven or fewer posterior teeth in occlusion, although the policy was worded differently.

Plaintiff claims that Defendants violated his "right to dental care." Under "Request for Relief" in his Complaint, Plaintiff seeks only an "order to defendants to provide the needed dental prosthesis." On or about January 7, 2008, Plaintiff was missing four teeth (two molars on each side of his jaw). On January

The factual background is substantially adapted from Defendants' motion. The Court deems Defendants' facts admitted pursuant to Federal Rule of Civil Procedure 56(e)(2) and after Plaintiff's failure to file any opposition despite the Court's December 10, 2010, notice pursuant to Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998) (en banc) and Klingele v. Eikenberry, 849 F.2d 409 (9th Cir. 1988). (See Doc. No. 28.)

1 7, 2008, Plaintiff had a dental examination with Defendant Dentist
2 Musgrave at Centinela State Prison. At this appointment, Plaintiff
3 requested dentures and claims he told the dentist he had difficulty
4 chewing his food due to the limited time he was given to eat.
5 Plaintiff had nine posterior teeth in occlusion and claims he was
6 informed he did not qualify for dentures as a result. Plaintiff has
7 admitted that under institutional policy, he would have to have
8 seven or fewer posterior teeth in occlusion to qualify for a dental
9 prosthesis. Plaintiff alleges that Defendant Chief Dental Officer
10 Peters at Centinela State Prison approved Defendant Musgrave's
11 denial of the prosthesis.

12 Defendant Musgrave did not list dentures on Plaintiff's
13 treatment plan. Under the class action-mandated dental treatment
14 protocol, dental staff were directed that a treatment plan should be
15 provided only when an inmate patient has seven or fewer posterior
16 teeth in occlusion. Inmate Galindo had at least nine posterior
17 teeth in occlusion. Defendant Musgrave did not believe there was an
18 excessive risk to Plaintiff's health by requiring Plaintiff to
19 follow the mandated dental protocols. Defendant Musgrave believed
20 that Plaintiff would still be able to eat with his nine posterior
21 teeth that were in occlusion—only that Plaintiff might be inconve-
22 nienced by having to eat a bit slower than if he had dentures.

23 Defendant Musgrave never became aware that the lack of
24 dentures caused Plaintiff any serious health problems due to not
25 receiving adequate nutrition or otherwise.

26 At all relevant times, Defendant Smelosky was the warden at
27 Centinela State Prison.

28

II. LEGAL STANDARD

16 The parties bear the same substantive burden of proof as
17 would apply at a trial on the merits, including plaintiff's burden
18 to establish any element essential to his case. Anderson, 477 U.S.
19 at 252; Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Lack of
20 a genuine issue of material fact on a single element of a claim for
21 relief is sufficient to warrant summary judgment on that claim.
22 Celotex Corp., 477 U.S. at 322-23.

23 The moving party bears the initial burden of identifying the
24 elements of the claim in the pleadings, or other evidence, and
25 "showing" -- that is, pointing out to the district court -- that
26 there is an absence of evidence to support the nonmoving party's
27 case." Id. at 325; see also Fed. R. Civ. P. 56(c). "A material

1 issue of fact is one that affects the outcome of the litigation and
 2 requires a trial to resolve the parties' differing versions of the
 3 truth." S.E.C. v. Seaboard Corp., 677 F.2d 1301, 1305-06 (9th Cir.
 4 1982). The burden then shifts to the nonmoving party to establish,
 5 beyond the pleadings, that there is a genuine dispute for trial.
 6 Celotex Corp., 477 U.S. at 324.

7 **III. DISCUSSION**

8 **A. Defendants Are Entitled To Summary Judgment**

9 Based on the undisputed facts of this case, a dispute of fact
 10 does not exist regarding whether Defendants violated Plaintiff's
 11 Eighth Amendment rights by denying his request for dentures.
 12 Defendants are entitled to summary judgment as a matter of law as a
 13 result.

14 The threshold requirement to state a claim under 42 U.S.C.
 15 § 1983 is the identification of a cognizable right that defendants
 16 violated. See Devereaux v. Perez, 218 F.3d 1045, 1052 (9th Cir.
 17 2000). The Court construes Plaintiff's sole claim for "Right to
 18 dental care" as a claim under the Eighth Amendment's proscription
 19 against cruel and unusual punishment based on the denial of medical
 20 care. The Eighth Amendment "requires neither that prisons be
 21 comfortable nor that they provide every amenity that one might find
 22 desirable." Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982).
 23 Instead, it proscribes the "unnecessary and wanton infliction of
 24 pain," or punishment "so totally without penological justification
 25 that it results in the gratuitous infliction of suffering." Gregg
 26 v. Georgia, 428 U.S. 153, 173, 183 (1976). When an official's
 27 failure to act serves as the basis for the claim, courts use the
 28

1 standard of "deliberate indifference," which is stricter than mere
2 negligence. Estelle v. Gamble, 429 U.S. 97, 104, 106 (1976).

3 Prison officials demonstrate deliberate indifference toward
4 an inmate by knowing of and disregarding an excessive risk to inmate
5 health or safety. Farmer v. Brennan, 511 U.S. 825, 837 (1994). To
6 constitute deliberate indifference to an inmate's medical care, two
7 factors must be present: (1) an objective component—the course of
8 treatment doctors chose was medically unacceptable under the
9 circumstances; and (2) a subjective component—that officials chose
10 that course of treatment in conscious disregard of an excessive risk
11 to the inmate's health. Jackson v. McIntosh, 90 F.3d 330, 332 (9th
12 Cir. 1996).

13 To satisfy the objective component for deliberate indifference,
14 the deprivation suffered by an inmate must be sufficiently
15 serious, meaning deprivations which result in "the minimal civilized
16 measure of life's necessities." Wilson v. Seiter, 501 U.S. 294, 298
17 (1991). Deliberate indifference to medical needs only amounts to an
18 Eighth Amendment violation if those medical needs are serious.
19 Hudson v. McMillian, 503 U.S. 1, 9 (1992). "A serious medical need
20 exists if the failure to treat a prisoner's condition could result
21 in further significant injury or the unnecessary and wanton
22 infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059,
23 overruled on other grounds by WMX Techs. v. Miller, 104 F.3d 1133,
24 1136 (9th Cir. 1997) (citations and internal quotations omitted).
25 Routine discomfort is part of the prison sentence and does not rise
26 to the level of deliberate indifference. Hudson, 503 U.S. at 9.

27 Although prisoners must be provided with access to adequate
28 dental care, Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.

1 1989), prison inmates are not entitled to every possible dental
2 treatment that they might request:

3 It must be remembered that the State is not constitution-
4 ally obligated, much as it may be desired by inmates, to
5 construct a perfect plan for dental care that exceeds
6 what the average reasonable person would expect or avail
7 herself of in life outside the prison walls. . . . We are
governed by the principle that the objective is not to
impose upon a state prison a model system of dental care
beyond average needs but to provide the minimum level of
dental care required by the Constitution.

8 Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir. 1986) (citations,
9 internal quotations, and brackets omitted).

10 To satisfy the subjective element, a prison official must
11 have a sufficiently culpable state of mind to violate the Eighth
12 Amendment. Wilson, 501 U.S. at 297. To show deliberate indifference,
13 "[a] defendant must purposefully ignore or fail to respond to
14 a prisoner's pain or possible medical need." McGuckin, 974 F.2d at
15 1060. Moreover, a delay in treatment must be harmful. Id. A
16 Plaintiff must show the course of treatment chosen was "medically
17 unacceptable under the circumstances, and the course of treatment
18 was chosen in conscious disregard of an excessive risk to the
19 plaintiff's health." Jackson, 90 F.3d at 332 (citations omitted).

20 The facts in this case establish that Defendants' denial of
21 Plaintiff's request for dentures was objectively reasonable and
22 justified. Plaintiff did not meet the CDCR's established require-
23 ments for receiving dentures. Defendants were well within the
24 CDCR's policies when they denied Plaintiff's request. Nor was
25 Plaintiff's medical condition serious such that the CDCR's policy
26 amounts to an unnecessary and wanton infliction of pain. Although
27 Plaintiff could not eat as fast as he liked, he nonetheless was able
28 to eat. Moreover, the facts establish that Defendants had no

1 knowledge regarding whether Plaintiff was experiencing any pain or
 2 other harmful effects as a result of not having dentures. Nor is
 3 there any evidence that Defendants knew that Plaintiff suffered any
 4 actual harm. Defendants consequently did not purposefully ignore or
 5 fail to respond to Plaintiff's pain or possible medical need. Based
 6 on the foregoing, Defendants are entitled to summary judgment as a
 7 matter of law on Plaintiff's Eighth Amendment claim.^{2/}

8 **B. Defendants Are Entitled to Qualified Immunity**

9 Defendants claim they are entitled to summary judgment
 10 because they are immune from suit. Because Plaintiff cannot make
 11 out a constitutional violation against any of them, the undersigned
 12 agrees.

13 Government officials are entitled to qualified immunity
 14 "insofar as their conduct does not violate clearly established
 15 statutory or constitutional rights of which a reasonable person
 16 would have known." Liston v. County of Riverside, 120 F.3d 965, 975
 17 (9th Cir. 1997) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818
 18 (1982)). The defense of qualified immunity allows for errors in
 19 judgment and protects "all but the plainly incompetent or those who
 20 knowingly violate the law. . . . [I]f officers of reasonable
 21 competence could disagree [whether a specific action was constitu-
 22 tional], immunity should be recognized." Malley v. Briggs, 475 U.S.
 23 335, 341 (1986). Qualified immunity balances the interests of "the
 24 need to hold public officials accountable when they exercise power

25
 26 ^{2/} Warden Smelosky is entitled to summary judgment on the additional
 27 basis that he was not involved in the decision to deny Plaintiff's
 28 dentures request and did not personally participate in this case in
 any way. He is sued merely based on his status as Warden, and
 liability cannot be found against him solely on that basis. See
Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007); Lolli v.
County of Orange, 351 F.3d 410, 418 (9th Cir. 2003); MacKinney v.
Nielsen, 69 F.3d 1002, 1008 (9th Cir. 1995); Hansen v. Black, 885
 F.2d 642, 646 (9th Cir. 1989).

1 irresponsibly and the need to shield officials from harassment,
 2 distraction, and liability when they perform their duties reasonably."
 3 Pearson v. Callahan, 555 U.S. 223, 129 S. Ct. 808, 815
 4 (2009). The Court must determine "whether, in light of clearly
 5 established principles governing the conduct in question, the
 6 officer objectively could have believed that his conduct was
 7 lawful." Watkins v. City of Oakland, 145 F.3d 1087, 1092 (9th Cir.
 8 1998).

9 The Court engages in a two-part inquiry: (1) whether the
 10 facts shown "make out a violation of a constitutional right," and
 11 (2) "whether the right at issue was 'clearly established' at the
 12 time of defendant's alleged misconduct." Pearson, 129 S. Ct. at
 13 815-16. The Court may consider these steps in any order it wishes.
 14 Id. at 818.

15 If the Court first determines that no constitutional
 16 violation has been made out, "there is no necessity for further
 17 inquiries concerning qualified immunity." Saucier v. Katz, 533 U.S.
 18 194, 201 (2001), *overruled on other grounds by Pearson*, 129 S. Ct.
 19 at 818.

20 Because, as discussed above, Plaintiff has failed to make out
 21 a constitutional violation against any of the Defendants, the
 22 undersigned's inquiry ends there. After all, it would be futile to
 23 attempt to determine whether a constitutional right was clearly
 24 established when no such violation exists in the first place. See
 25 Saucier, 533 U.S. at 201 ("If no constitutional right would have
 26 been violated were the allegations established, there is no
 27 necessity for further inquiries concerning qualified immunity.");
 28 see also Tennison v. City & County of San Francisco, 570 F.3d 1078,

1 1092 & n.7 (9th Cir. 2009) (same; recognizing Pearson's partial
2 overruling of Saucier).

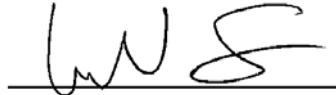
3 Based on the foregoing, all three Defendants are entitled to
4 qualified immunity and are immune from suit as a result.

5 **III. CONCLUSION**

6 The Court GRANTS Defendants' Motion and enters judgment in
7 Defendants' favor. The Clerk of Court is directed to close this
8 matter accordingly.

9 IT IS SO ORDERED.

10 DATED: June 21, 2011

11
12 
13

Hon. William V. Gallo
U.S. Magistrate Judge

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28